REPORT

OF

ATTORNEY GENERAL BRENT,

TO

HIS EXCELLENCY, GOV. LOWE,

IN RELATION TO THE

CHRISTIANA TREASON TRIALS,

IN THE

CIRCUIT COURT OF THE UNITED STATES,

HELD AT PHILADELPHIA.

ANNAPOLIS:
THOMAS E. MARTIN, PRINTER.
1852.

REPORT

REPORT.

To His Excellency, F. Louis Lowe,
Governor of Maryland:

I have the honor to submit to your Excellency, my final report of the proceedings in and result of the treason trials in Philadelphia, originating in the murder of Edward Gorsuch, a citizen of Maryland.

On my arrival, on the 22nd of November, in the city of Philadelphia, the difficulty in regard to my appearance as counsel for the State of Maryland, of which your Excellency is already apprised, was satisfactorily adjusted in a personal interview between Mr. Ashmead, the U. S. District Attorney, and myself.

This gentleman, in the presence of the Hon. James Cooper, tendered to me the position of leading counsel in these trials, which I promptly declined, on the ground that I never had claimed such precedence for myself, as well as on grounds of policy and expediency for the prosecution.

It was then agreed that the Hon. James Cooper, of Pennsylvania, (the distinguished colleague associated with me for the State of Maryland,) should occupy the position of leading counsel, which he did with fidelity and signal ability. I will here take occasion to remark that, however unfortunate the preliminary difficulty between Mr. Ashmead and myself, and however prejudicial it may have been to the development of the evidence, by preventing that early interchange of views and information, which was necessary to a thorough preparation of these important cases, yet I received during the trial every social and professional courtesy at the hands of that gentleman, and he was at all times prompt to act upon any suggestion which might be made by either Mr. Cooper or myself.

During the progress of the trial, and after a full interchange of views between ourselves, we obtained important additional evidence, shewing the ramified and extensive character of the combination, forcibly to resist the laws of the United States, but when offered in evidence, it was ruled out by the court, as inadmissible in so late a stage of the cause. It is proper, however, to remark

that, as I understand the opinion of the Court in their charge to the jury, no additional evidence on our part could have changed the result.

Considering the nature of my instructions, I shall report several matters, which, in my opinion, were greatly calculated to obstruct a fair and impartial trial.

In striking the jury, we had great difficulty, because from the most satisfactory information in our power, we believed that a large majority of the appearing jurors were unfavorable to a conviction, and which belief was strengthened by the fact, that out of eighty-three jurors appearing for challenge, the prisoner accepted fifty-nine, of whom fifty-one were set aside by the United States under their qualified right of challenge, until the whole panel was exhausted. The jury was ultimately formed, while the prisoner had eleven peremptory challenges still unexhausted. These facts were made the more significant by the subsequent conduct of the United States Marshal, Mr. Roberts, who summoned the jury. It was manifest to every one, that by the partiality of this officer, members of the Anti-slavery Society (males and females) were daily admitted to preferred seats in the court-room. So palpable was this partiality, that it was a subject of frequent remark in the Philadelphia papers, among which I will particularly refer to "Cummings' Evening Bulletin." It is also a fact within my personal knowledge, that free negroes were admitted through the Marshal's office into the court-room, when crowds of white citizens were kept outside of the door; and complaint was made to me by a respectable gentleman, one of the witnesses from Maryland, that after the recision of the order of the court to exclude witnesses, he was refused admission by a deputy of the Marshal, when a colored man was passed at once into the court-room, upon the written permit either of the Marshal, or somebody else. But I have other and more significant facts. I brought to the attention of the court, the fact stated in the "Pennsylvania Freeman," that the Marshal (Mr Roberts) had actually dined with the prisoners, or some of them, during the trial, on Thanksgiving day, and when I was about to read the article from the paper, I was stopped by his Honor, Judge Grier, who in behalf of the Marshal, denied the truth of the statement that he had so dined; but unfortunately for the Judge's interposition, the Marshal immediately afterwards made his own explanation, and admitted that he had not only assisted at the dinner, "but had set down and *partaken sparingly*" of the Thanksgiving dinner, with the white prisoners. I cannot but consider such conduct as highly unbecoming that officer from whom, next to the Judge, we had a right to expect impartiality and a due regard for decorum.

In this connection I will also state, that a few weeks before the trial, Peter Washington and John Clark, two important witnesses for the prosecution, escaped from prison without breaking a lock

or using any force, as proved on the trial by a witness; and though I cheerfully acquit the Marshal of all privity with their escape, yet the fact remains, that there was treachery on the part of some officer within the walls of the prison. Another remarkable fact was the corruption of a Government witness, by the name of Harvey Scott, a free negro, who had thrice testified—once at Christiana, once at Lancaster, and once at Philadelphia, to the fact of being an eye-witness of the murder of Mr. Gorsuch; and now, on this trial, influenced by bribes or some other corrupt consideration, when placed on the stand by the United States, openly confessed that he had thrice committed perjury, and then swore on this trial that he was not present and knew nothing about the affair, which perjury was received with open applause in the Court room. Again: the counsel for the defence applied to the Court for an order to bring out some twenty-four of the negroes in prison, to see which of them could be identified as participants in the treason, by Henry H. Kline, a material witness for the prosecution. At the opening of the Court on the next day, these negroes were seen sitting in a row, supported on each side by white females, who, to the disgust of all respectable citizens, gave them open sympathy and countenance; each of the negroes appeared with new comforts around their necks—their hair carefully parted, and their clothing in every respect alike; so as to present one uniform appearance to the eye, as far as possible—all done, doubtless, for the double purpose of giving "aid and comfort" to the accused murderers of a white man, and of confusing and perplexing so important a witness as Kline, in respect to their identity. And this was manifestly done with the privity, sufferance and consent of the officers having charge of the prisoners, and passed unrebuked.

I have thus hastily referred to these collateral matters, because they shew the nature of the obstructions and the daring sympathies interposed against the course of public justice, by the machinations of a crew of miserable fanatics, countenanced and assisted by public officers, who seem to have had no decent respect for themselves or for a Court of Justice.

In spite of all these things and many others that I could enumerate, I believe that we succeeded in getting a Jury empannelled, a majority of whom were unexceptionable and unbiassed, but that was the result of great tact and management on the part of those, counsel for the United States, who, by arrangement took charge of that portion of the proceedings; and, I feel bound to acknowledge in this particular, the eminent services of Mr. Ludlow, Mr. George Ashmead and Col. Robt. M. Lee, of Philadelphia, who took every possible precaution to obtain a good and impartial Jury.

Before proceeding to announce to your Excellency the result of these prosecutions, and the grounds on which they were dismiss-

ed, I must here take occasion to say, that so far as my observation went, a large majority of the citizens of Philadelphia desired to see the laws faithfully and fairly executed, and that the parties, if guilty, should suffer the highest penalty of the laws; but unfortunately the faction before alluded to, is so active, so artful and so unscrupulous, and possessing withal, as I am informed, such large means—so fatally bent on rescuing every one of the accused parties from the grasp of the law, that I had but little hope, from the beginning, of a favorable result, if it was in their power by any means to turn aside the Sword of Justice. Still my colleague and myself determined at all events, to do our duty, and believing the party on trial to be guilty of treason, we relaxed no fair or honorable effort to convict him, until the end was reached by the ruling of the Court; unexpected as it was to us and I believe to the majority of the citizens of Philadelpnia.

I have sent your Excellency full and authentic printed copies of the evidence, which will save me the trouble of a more detailed report. I do not deem it at all necessary to review this evidence, but will content myself with drawing your attention to the principal rulings of the court, which cut up this prosecution by the roots.

In the first place, the defence in order to get rid of the prima facie case, made out by the United States, offered evidence to show that, as far back as January, 1851, a negro man, said to have come from Maryland, had been siezed at the house of one Chamberlyn, his employer, by white individuals living in that neighborhood, and that he had never returned, and it was said by counsel for the defence, that this and other acts (not given in evidence) had caused an organization of colored persons in that neighborhood, to prevent the kidnapping of free negroes, and that this was the organization which had so suddenly brought such large numbers to the attack of the Gorsuch party.

To rebut this sort of defence, and to show that the organization thus confessed, did not originate at the time and for the purpose alleged by the defence, the United States then offered to show that both before and after the transaction at Chamberlyn's, there were armed bands of negroes in great numbers marching on the public roads in that neighborhood, encouraged by white men, for the avowed purpose of shooting and resisting all persons who might come armed with legal process for the arrest of fugitive slaves, and that these bands did, before and after the transaction at Chamberlyn's, successfully resist with force and arms, various attempts made by masters to arrest fugitive slaves in that neighborhood, in the manner and with the process as directed in the Act of Congress passed in September, 1850.

The United States, further to repel and rebut the evidence thus given by the defence, offered to show that prior to the transaction at Chamberlyn's, public meetings of white citizens were held in

the neighborhood, and in the adjoining county of Chester, attended by delegates from Sadsbury township, where the murder was committed, at which, resolutions were passed, denouncing the act of Congress, known as the fugitive slave act, and declaring that the same ought to be resisted by force, whenever its execution was attempted.

But the court ruled this testimony inadmissible, because it was not in their view rebutting evidence, but rather matter in chief. Undoubtedly, this evidence if known to us in time, would have been competent in chief, but it did seem to us that it was clearly admissible as rebutting evidence, to explain the true origin and purpose of that organization which was referred by the defence, to a certain object and a certain date.

But the decisive points ruled, which were fatal to all the pending prosecutions, are to be found in the following passage, taken from the opinion of the court. "Without desiring to invade the prerogatives of the Jury, in judging of the facts of this case, the court feel bound to say, that they do not think the transaction with which the prisoner is charged with being connected, rises to the dignity of treason or a levying of war—not because the number or force was insufficient, but, 1st. For want of any proof of a previous conspiracy to make a general and public resistance to any law of the United States. 2nd. There is no evidence that any person concerned in the transaction knew that there were such acts of Congress as they were charged with conspiring to resist by force and arms, or had any other intention than to protect one another from what they termed kidnappers, (by which slang term they probably included not only actual kidnappers, but all masters and owners seeking to re-capture their slaves, and the officers and agents assisting them.)"

It will be observed here, that Judge Grier does not deny the Treason, "because of the insufficiency of the force" to levy war against the United States. He has therefore virtually adopted the rule laid down by Judge Chase, on the second trial of Friese in the United States Circuit Court, where that learned Judge declared "that the quantum of the force employed, neither lessens or diminishes the crime; whether by one hundred or one thousand persons is wholly immaterial."

But his Honor, Judge Grier, places the acquittal of Castner Hanway on two distinct grounds. First, "for want of any proof of a previous conspiracy *to make a general and public resistance* to any law of the United States."

He does not negative the idea, that there was evidence of some conspiracy, but he decides that there is no evidence of a conspiracy to do a particular thing, viz: "to make a general and public resistance to any law of the United States."

This, I humbly submit, is a new qualification of the rule laid down by the distinguished Judges, who had, as it was thought,

settled the law of treason, in the cases growing out of the Western insurrections; the Northampton Insurrection, and the case of Bollman and Swartwout, in the Supreme Court of the United States. The true rule laid down in these cases is admitted, in this very charge of Judge Grier, to be in the following words:

"If a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, they are guilty of a high misdemeanor. But if they proceed to carry such intentions into execution by force, they are guilty of the treason of levying war." He also admits that it was decided in Fries' case, which he does not undertake to overrule or question, "that any insurrection to resist or prevent by force or violence the execution of any statute of the United States, under any pretence of its being unequal, burdensome, oppressive or unconstitutional, is a levying of war against the United States within the Constitution."

And again, "If the intention be to prevent by force of arms the execution of any act of Congress altogether, any forcible opposition calculated to carry that intention into effect, is levying war against the United States."

Now these are the tests, and the definitions laid down by the highest, the most binding and authoritative decisions, as quoted in so many words by Judge Grier.

How does he escape from their force? By considering the recapture of fugitive slaves under and according to the terms of an Act of Congress, *as a private and not a public matter*, and hence his corollary is drawn, that a conspiracy to resist a master or all the masters who may come into a township to recapture their fugitive slaves, is not a conspiracy to make a general and public resistance to any law of the United States."

I do not know, and cannot conceive of a more public matter, than the enforcement of an Act of Congress, based on a fundamental article of the Constitution, securing "the surrender of fugitives from labor."

Surely this is a public law upon a public subject-matter, and one which affects the compact of the Union itself; the Supreme Court of the United States having expressly declared in Prigg vs. Pennsylvania, in 16 Peters, that without that article in the Constitution, the Union could never have been formed.

How then can preconcerted resistance, by force of arms and by a multitude of people, to the execution of the act of Congress for the surrender of fugitives from labor, be considered judicially as a resistance for a private purpose?

If the assemblage of men was merely to rescue a particular slave from motives of affection, and their intentions did not extend to the rescue of all slaves who might be sought after in that neighborhood, I agree that it would not be such a resistance to the Act of Congress as would amount to levying of war against the

authority of the United States, but when the object of the con federation is to prevent the arrest under the Act of Congress of all fugitive slaves in a particular township or county, or neighborhood, I do consider it as a general resistance to a public Act of Congress.

If an act of Congress can be thus resisted at all points by local combinations, it is manifest that it is a dead letter, unless the General Government is prepared to march an army into every neighborhood where fugitive slaves are to be arrested. It is only in this way, by local combinations, that any act of Congress has ever been or will ever be resisted; and whether the combination is confined to one township, as in the case of Hanway, or extends to one county, as in Fries' case, or to portions of four counties, as in the case of the Western Insurgents, tried in 1797, must be wholly immaterial, since the mischief is the same and the Act of Congress can in principle be as effectually resisted by local insurrections in particular districts, as by one general combined insurrection all over the Union.

It is not therefore, and cannot be any the less treason, because the combination to resist by force the execution of an Act of Congress is confined to a particular district of country, for if that were the case, where is the limit and how large must be the local insurrection to amount, in the words of Judge Grier, "to the dignity of treason."

Would not an insurrection in all the free States to prevent by force the execution of the fugitive slave act, be a levying of war against the authority of the United States? Would his Honor Judge Grier deny that such an insurrection would be treasonable? And yet his whole argument would seem to deny it, because it would be "*local and for a private purpose*," viz: to prevent masters from recapturing their slaves.

But if such an insurrection would be a levying of war, it would necessarily result that an insurrection for the same purpose and carried out by armed forces—whether confined to one State, one county or one township—would partake of the same character, if Judge Grier's admission be correct, that "the levying war does not depend upon the quantum of force employed, and whether it be one hundred or be one thousand persons, is wholly immaterial."

It seems to me, therefore, that the fatal error in the charge of the Court, is in denying to any local organization for armed resistance to the execution of the fugitive slave act, the character of treason; and that the local character of the conspiracy is not a correct legal criterion by which to ascertain treason, is conclusively established by the case of the Western Insurgents in 1797, who were convicted of treason, although the organization was confined to four counties, and afterwards, more particularly in the case of the Northampton Insurrection by the conviction of Fries.

In this latter case, there was a local combination to resist, by force, the collection of the direct tax imposed on houses, by an act of Congress, and the overt act of treason was the rescue, by a force of about one hundred armed men, of some prisoners held in custody by the United States Marshal. It seems to me that it was not as strong a case as Hanway's, where, as some witnesses stated, there were one hundred and fifty armed men, who defied the authority of the officer of the United States when he read his warrants, and by armed resistance prevented him from executing the act of Congress.

In Hanway's case the resistance was carried to the taking of life, and the insurgents were more numerous than in Fries' case, where no blood was shed.

Fries' case and the others above cited, have always been considered as settling, in this country, the doctrine that any assemblage of men to prevent by force the execution of any act of Congress, was a levying of war, provided they did afterwards forcibly resist the execution of the law; and they equally settle the doctrine that it is not the less treason because the resistance is confined to one district of country, or that it showed itself in but one overt act at a particular time and place, for it will be observed that the only overt act in Fries' case, was the rescue of the prisoners at Bethlehem, in Northampton county.

Judge Grier has found no case on which to support his decision but the case of the United States vs. Hoxie, decided by the Hon. Brockholst Livingston, and reported in 1st Pain, 265. It is there said, that "to constitute treason, the resistance must be of a public and general character, not of a local and private nature." As applied to the facts of that case, there can be no doubt that the principle there stated was correct. There, as stated in the opinion of the court, the assemblage of men was for no other purpose than for pay and hire to smuggle a *particular* raft of timber into Canada against the embargo law—and while carrying out this purpose, they came into violent collision with the military forces of the United States and fired on them; unquestionably, that was a private transaction, done for a private purpose of emolument, and with the intention to evade the laws in a single instance; but suppose the combination had been by one hundred or more armed men to prevent by force the execution of the embargo law, *whenever attempted in that* district of country, and suppose this general intention to have been carried out, in any one instance, by a forcible resistance to those laws, it would have been as much treason as any other case ever tried in this country.

It seems to me, therefore, with great deference to the superior learning of their Honors who tried the case of Hanway, that any combination in Sadsbury township, or elsewhere, generally to prevent by force the arrest of any fugitive slaves, who were in that vicinity, would be a combination of a general nature and for a

public purpose, to wit: the forcible resistance of a public law of the United States.

Now, it was, unquestionably, a matter of fact for the Jury to decide upon the intention of that assemblage of men, and for what purpose they came together. If they found that it was merely temporary and caused alone by a motive to rescue these particular slaves of Mr. Gorsuch, it was not treason, but if it was an organization set on foot for the purpose of resisting the arrest of all fugitive slaves in that neighborhood who might be claimed under process according to the terms of the act of Congress, then I submit, that such a purpose, in such an assembly of men, carried out by force of arms, would be a resistance of a public general law, and could not correctly be said to be for a private purpose. I cannot conceive of a matter more vitally affecting the public, if not the Union itself, than the execution of this act of Congress, based on so fundamental an article of the Constitution.

But the court have intimated to the jury, that there was "no treason," because there "was no conspiracy to make a general and public resistance to any law of the United States."

This takes from the jury their prerogative to decide on the intention of the assembled multitude, which always is a matter of fact to be found by a jury.

But surely it was competent to infer a treasonable intent to resist all arrests of fugitive slaves, where the evidence showed a preconcerted assemblage almost instantaneously by the blowing of horns, of more than an hundred men, who deliberately defied the officer of the United States when he read the warrants, and fired upon his party, killing one and wounding others.

When the war-cry of the insurgents was, "we are free," and when, more especially, so far as the white prisoners were concerned, there was no evidence that they knew the slaves of Mr. Gorsuch, and one of them, Elijah Lewis, swore, on the trial of Hanway, that when he read the warrants at the time, he did not notice "for what negroes they were." From all these facts, and the proof of the wide-spread disloyalty and disaffection to the law, of all that neighborhood, it was hardly possible for a fair-minded jury to have doubted that this insurrection of armed men was not for the private purpose of rescuing these particular negroes, but for the general purpose of preventing any arrests of fugitive slaves in that neighborhood; that is, in effect, to prevent the execution of the fugitive slave act.

The Court then went on further to decide, that the insurrection "was but a sudden conclamatic or running together, to prevent the capture of certain of their friends, or to rescue them if arrested," thus evidently deciding the character and intention of the insurrection, which was the disputed matter of fact, on which the Jury were alone competent to pass.

Judge Grier likens this case to that of a band of smugglers re-

sisting the revenue officers, or to a community of debtors, combining forcibly to resist the execution of civil process; and he assumes that there was in this case nothing more than a collection of fugitive slaves, encouraged by the neighbors, in combining together to resist the capture of any of their number. They may resist with force and arms their master, or the public officer who may come to arrest them—they may murder and rob them—they are guilty of felony and liable to punishment, but not as traitors.

The case put, of smugglers resisting the revenue laws, is an unfortunate one and not at all apposite, because their primary intention is not to levy war or to resist by force the revenue law, but rather to cheat, evade, and defraud the laws for private lucre and gain. But here the alleged conspiracy was not to evade the execution of the Fugitive Slave Act; but primarily, directly and openly to resist by force the arrest of fugitive slaves.

If a band of smugglers were, however, to confederate for the express purpose of preventing by force the collection of any public revenue in a particular district, and they were to proceed to carry that purpose into effect by force of arms, it would amount to a levying of war, I presume, and would go far beyond a case of smuggling.

As to a community of debtors resisting civil process by a forcible combination, I am not aware that such a case has ever been judicially held not to be treason, but suppose that a large number of debtors to the Government combine to resist by force of arms the execution of United States process on their persons or their property, and do, in pursuance of that general design, resist with force the United States Marshal while executing process of the United States, would not that be a case of treason? Or suppose one hundred men conspire to prevent by force of arms the collection of any revenue by the custom house officers in Philadelphia, and do carry that intention into effect forcibly, I presume that would be treason.

But the Northampton Insurrection was the very case where the people of Northampton county intended to protect themselves alone from the direct tax on their houses—they did not design to prevent the exaction of the tax elswhere, or to levy war generally against the law wherever its execution might be attempted, yet it was not then thought that any local combination to resist the execution of a law on the conspirators themselves, was not treason, when ripened into forcible resistance. But his Honor Judge Grier made a great mistake of fact, in assuming that this conspiracy was merely "to protect one another from kidnappers," or that it was merely an organization of "runaway slaves."

I confidently assert, that according to the evidence, there were no slaves in the whole multitude, but the three owned by Mr. Gorsuch, who were seen on the ground, so far as any evidence

was given; all the rest of the multitude were to be considered, under the laws of Pennsylvania, as freemen, prima facie.

The case then was simply this: Here is an insurrection of one hundred or one hundred and fifty armed blacks, all of whom are free, except three who are slaves, and these blacks incited and encouraged by at least four white men, Townsend, Hanway, Lewis and Scarlett, are there combined together to resist an officer of the United States in the execution of an act of Congress, and do, by force of arms, resist the execution of the law; and there is evidence that there was a preconcerted intention to rescue not merely these slaves, but any others whose arrest might be attempted in that neighborhood.

Upon this case, which was fairly made out in evidence, the Court, and not the Jury, have passed, and have said it was not treason; because, as a matter of fact tried by the Court, the conspiracy was for a private purpose. It will be observed, that the Court had previously ruled out all evidence to show that the same organized and armed bands had often before come together, not "by a sudden conclamatio, or running together, to rescue particular friends," but to prevent, by force, any and all arrests in that locality, of fugitive slaves.

The second reason why it was not to be dignified as treason, is in these words: "There is no evidence that any person concerned in the transaction knew that there were such acts of Congress as they were charged with conspiring to resist, by force of arms, or had any other intention than to protect one another from what they termed kidnappers."

I have always supposed that if a set of men combined to do an act forbidden by law, they do, in legal contemplation, combine to oppose the law, whether they actually knew the law or not.

If a law be passed to collect a tax, and when the officers come to collect it, they are met by an armed array of men, who oppose them by force, with the intention that the officers shall not do their duty, it is not the less treason, because the parties were, in fact, ignorant that such a law had passed.

If it be necessary to prove actual, positive knowledge of a law, before an offender can be punished, then, indeed, will it be impossible to convict the ignorant and the vicious, who never trouble themselves to read the laws; or, indeed, to convict any body who has not seen the act of Congress. I cannot but regard this as a strange innovation on the legal maxim, "that ignorance of the law excuseth no man." I am wholly at a loss to account for any such remark in the charge of the Court. It is expressly against the doctrine laid down by Judge Iredell, in Fries' case, reported in the "American State Trials," page 596, where the plea that Fries was not aware of the act of Congress, which he had violated, was overruled, on the ground that "every man is bound to know the laws of the land."

Certainly it is not, and cannot, be necessary, before a conviction for treason, that the act of Congress, which they intended to resist, shall be read to the rebel army, as the "Lord Mayor of London" would read the riot act to a mob.

The Judge then proceeds to assert that, "previous to this transaction, no attempt had been made to arrest fugitives, under the new act of Congress, by a public officer; heretofore, arrests had been made not by the owner in person, or his agent properly authorized, or by an officer of the law. Individuals, without any authority, but incited by cupidity and the hope of obtaining the reward offered for the return of a fugitive, had heretofore undertaken to seize them by force and violence—to invade the sanctity of private dwellings at night, and insult the feelings and prejudices of the people."

Several of the transactions offered in evidence by the United States, and ruled inadmissible by the Court, as before stated, were cases where the master had gone into that very neighborhood, armed with process in the hands of a public officer, according to the terms of the Fugitive Slave Act, and yet found himself successfully resisted, and compelled to retreat, by an overwhelming display of force. We could, in all the succeeding cases, have introduced this evidence in chief, and thus have avoided the difficulty of the Court; but it would have availed us nothing, after the Court had proclaimed that "the conspirators were acting for private and local, not general or public purposes," and, especially, that "the parties must be acquitted, because there was no evidence that they knew there were such acts of Congress as they were charged with conspiring to resist."

Let the proof have been plenary and conclusive as to the preconcert and intentions of the parties, it would have been useless and idle to prosecute any more of these cases, unless the parties would admit, or we could prove that they had read the act of Congress.

But Judge Grier complains in the above extract from his charge that "individuals, without any authority, but incited by cupidity and the hope of obtaining the reward, had invaded the sanctity of private dwellings at night," and "had thus insulted the feelings and prejudices of the people."

This doctrine stripped of the words in which it is clothed, means simply, "that there was something culpable in men going at night to houses where runaway slaves were harbored, and arresting them to secure the reward advertised by the owner, and that the people who were the harborers of these slaves, had a right to feel themselves insulted."

The only instance in which this was done, so far as proved, was the transaction at Chamberlyn's, "where a black man, said to have come from Maryland, in the last eighteen months, was seized a little after candle light, by men residing in the neighborhood and carried off."

There was no proof to show, that this man, thus taken away,

was in fact free, and Judge Grier declared on the trial that it was immaterial whether he was free or a slave. He said: "If the master went into the house in that way at night, he might be called and considered a kidnapper, because he did not distinguish himself from one in his conduct, and it would make no difference whether he was a kidnapper or not."

See printed proceedings, page 288.

Now this whole doctrine of Judge Grier is in direct and flagrant opposition to the principles laid down by the Supreme Court of the United State, in Prigg vs. Pennsylvania, 16 Peters, 613, where Judge Story, in delivering the opinion of the Court says: "The clause (meaning of the constitution) puts the right to the service or labor upon the same ground and to the same extent in every other State, as in the State from which the Slave escaped." Now if this be law, how can it be alleged that any wrong was done by the arrest of a fugitive slave at Chamberlyn's, to obtain the reward advertised by the master, and for his benefit, unless it can be shown that such a proceeding would be illegal in the State whence the slave had fled? I can only add in reference to this transaction at Chamberlyn's, that we had in attendance on the Court, a respectable citizen of Maryland, who was the owner of this very slave arrested at Chamberlyn's, and who was fortunate enough in this way to get him by his agents, even in the house of his harborer; but after this intimation from the bench, we did not trouble ourselves to offer the evidence. It certainly is strange that Judge Grier should thus disregard the solemn adjudication of the Supreme Court, and judge the great constitutional right of re-capturing slaves by "the insulted feelings and prejudices of the people," rather than by looking at the laws of the State whence the fugitive escaped, according to the rule laid down by the Supreme Court, in Prigg's case. But it is said to be the act of a kidnapper for even the master to seize his fugitive slave at night in the house of a Pennsylvanian, who is harboring him, without having made due inquiry into his freedom or slavery.

This sort of recapture, though secured by the constitution, (as expounded in Prigg's case, where it can be done without "illegal violence or a breach of the peace,") is matter of grave judicial complaint, when a little reflection must have satisfied his Honor, that, unless the master or his agents can seize the fugitive at night in the house where he is harbored, the whole constitutional right of re-capture is at an end, for it would be a mockery to send the master in the light of day to the house where his slave is protected and cherished.

The very appearance of the master would be but a notice for his slave to escape, or for his armed allies "to run together by a sudden conclamatio to rescue their friend," as Judge Grier has it in his charge; and then the master would probably fare the fate of those lamented citizens of Maryland, who have already fallen as

sacrifices "to those insulted feelings and prejudices," which his Honor, Judge Grier, has so kindly respected in his charge to the Jury.

I can only say, that both, before, and since the passage of the Fugitive Slave Act, the master has the same right of recapturing his fugitive slave, personally, or by his agents, as he would have in the State whence his slave fled; and no act of Congress, or State legislation, can override this paramount constitutional right, so ably expounded in Prigg's case, by Judge Story. The Fugitive Slave law, cannot therefore be considered as the exclusive remedy for the master. It is but an additional security, and furnishes him with a more effectual remedy, at his election, by providing a public officer with power expressly granted to summon the *posse comitatus*—a power, by the way, of very little account in a place like Sadsbury township, where the bystanders positively refused to assist when summoned by the officer, in which refusal they were justified by the counsel of the defendant, *who without a rebuke from the court*, denied that Congress could make "any respectable Pennsylvanian become a slave-catcher."

It is not necessary however to argue this right of recapture under the Constitution, as Mr. Gorsuch and his party were fully protected by process under the act of Congress, and the resistance made to them, was in effect resistance to a public act of Congress.

If a portion of the people of Pennsylvania feel themselves insulted and their families outraged by nocturnal arrests, at their houses, of fugitive slaves, they can easily avoid such disagreeable matters by first seeing that they are employing a free colored person and not actually harboring a runaway slave. If a free negro be kidnapped by day or night into slavery, we would all agree that so heinous a crime should be adequately punished, and our own laws of Maryland do most severely punish all such offences.

But no such case of kidnapping was proved on this trial, and if it had been, it was no reason to justify or excuse the killing of Mr. Gorsuch, who went into Sadsbury township, armed with legal process, and accompanied by a public officer of the United States.

I respectfully submit that this decision has been the result of that unfortunate sectional feeling, which, in spite of the best intentions of the court, has unconsciously betrayed them into the belief, that this act of Congress was but a private remedy for a private right, instead of being, as it is, a great public law affecting the bond of the Union itself.

Hence it is, that the court have ruled that armed and organized resistance to the execution of this law, is not "levying war," as it would clearly be if there was a similar resistance to any other public law of the United States to prevent its execution, and as it was ruled in the cases of the Western and Northampton Insurgents.

I cannot but regard the effect of this decision as most disastrous

at this time. It practically strikes dead the Fugitive Slave Act, whenever armed bands of negroes, encouraged by white men, may choose to resist the officer of the United States, and he may be unprovided with an army superior to their forces. It encourages and incites these "black regiments with white allies," in their work of murdering Southern masters, who dare to pursue their slaves, by proclaiming that the United States Courts will not convict them, especially if it cannot be proved that they have read the act of Congress. It leaves no other possible redress by law, for such outrages as that by which Mr. Gorsuch perished, than local prosecutions in the county courts, where the insurgents and their white allies reside. I cannot conceive of a greater farce than such a prosecution would be before a county jury, a portion of whom would be linked in sympathies with the insurgents and their white counsellors and abettors, if indeed, they had not themselves been privy to the whole scheme of resistance to the law, and the murder of its agents.

We have already had a practical illustration of the integrity of local juries, drawn from the vicinage, in the infamous Coroner's inquest held over the body of Edward Gorsuch, where, as proved on this trial, twelve Jurors of Sadsbury township, upon their solemn oaths did find, "that on the morning of the 11th instant, the neighborhood was thrown into an excitement by the above deceased and some five or six persons in company with him, making an attack upon a family of colored persons living in said Township, near the Brick Mill, about four o'clock in the morning, for the purpose of arresting some fugitive slaves as they alleged. Many of the colored people of the neighborhood collected, and there was considerable firing of guns and other fire-arms, by both parties. Upon the arrival of some of the neighbors at the place, after the riot had subsided, they found the above deceased, lying upon his back or right side, dead. Upon a post mortem examination upon the body of the said deceased—by Drs. Patterson and Martin, in our presence—we believe he came to his death by gun shot wounds that he received in the above mentioned riot, caused by some person or persons unknown to us."

And this monstrous verdict, full of lies and calumny towards the dead, was rendered, as proved on this trial, by one of the Jurors and other witnesses, without any evidence before them, except that of the doctors who examined the dead body, although Kline, the United States officer, was an eye-witness to the whole affair, and offered himself as a witness to this unscrupulous and wicked Jury—a Jury who, in the language of one of their number placed on the witness stand, "did not wish to hear him (Kline) as he had been telling such various tales, they would not believe him on oath." Will it be believed that the various tales told by Kline, were simply that Elijah Lewis and Castner Hanway, two